



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9906]

RIN 1545-BN42

Nuclear Decommissioning Funds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 468A of the Internal Revenue Code of 1986 (Code) relating to deductions for contributions to trusts maintained for decommissioning nuclear power plants and the use of the amounts in those trusts to decommission nuclear plants. The regulations revise and clarify certain provisions in existing regulations to address issues that have arisen as more nuclear plants have begun the decommissioning process.

DATES: Effective date: These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE OFFICE OF THE FEDERAL REGISTER]**.

Applicability Date: For date of applicability, see §1.468A-9.

FOR FURTHER INFORMATION CONTACT: Jennifer C. Bernardini, (202) 317-6853 (not a toll-free number).

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SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the income tax regulations (26 CFR part 1) under section 468A of the Code relating to deductions for contributions to trusts maintained for decommissioning nuclear power plants and the use of the amounts in those trusts to decommission nuclear plants.

Section 468A was originally enacted by section 91(c)(1) of the Deficit Reduction Act of 1984, Public Law 98-369 (98 Stat 604) and has been amended several times, most recently by section 1310 of the Energy Policy Act of 2005, Public Law 109-58 (119 Stat 594). Temporary regulations (TD 9374) under section 468A were published in the **Federal Register** on December 31, 2007 (72 FR 74175). Final regulations finalizing and removing the temporary regulations (TD 9512) were published in the **Federal Register** on December 23, 2010 (75 FR 80697) (existing regulations). A notice of proposed rulemaking (REG-112800-16) (proposed regulations) was published in the **Federal Register** (81 FR 95929) on December 29, 2016. The proposed regulations provide additional guidance on deductions for contributions to trusts maintained for decommissioning nuclear power plants and the use of the amounts in those trusts to decommission nuclear plants under section 468A.

The Department of the Treasury (Treasury Department) and the IRS received several written and electronic comments in response to the proposed regulations. All comments are available at www.regulations.gov. The Treasury Department and the IRS held a public hearing on the proposed regulations on October 25, 2017.

After consideration of the comments received, including comments made at the public hearing, the proposed regulations are adopted as final regulations as revised by

this Treasury decision. In general, these final regulations follow the approach of the proposed regulations with some modifications based on the recommendations made in the comments. This preamble describes the comments received by the Treasury Department and the IRS and the revisions made.

Summary of Comments and Explanation of Provisions

1. Definition of Nuclear Decommissioning Costs

A. Inclusion of Amounts Related to the Storage of Spent Fuel within Definition of Nuclear Decommissioning Costs

Section 1.468A-1(b)(6) of the existing regulations defines nuclear decommissioning costs as including “all otherwise deductible expenses to be incurred in connection with” the disposal of nuclear assets. In the proposed regulations, the Treasury Department and the IRS addressed questions regarding whether nuclear decommissioning costs include costs related to an Independent Spent Fuel Storage Installation (ISFSI) for the construction or purchase of assets that would not necessarily qualify as “otherwise deductible” expenses under the existing regulations. The proposed regulations clarified the definition of nuclear decommissioning costs to specifically include ISFSI-related costs. The proposed regulations also confirmed that the requirement that an expense be “otherwise deductible” is not applicable to costs related to spent nuclear fuel generated by a nuclear power plant or plants. A commenter requested that the final regulations further clarify this point. The Treasury and the IRS view additional clarification as unnecessary and decline to adopt this suggestion.

The existing and proposed regulations assume operators typically store spent fuel in an on-site ISFSI, and thus the definition of nuclear decommissioning costs

included expenses related to fuel storage in on-site ISFSIs. However, the Treasury Department and the IRS understand that because the Department of Energy has not begun accepting spent fuel for disposal in a permanent geologic repository, on-site ISFSIs currently being used by operators of nuclear power plants may become overcrowded and, as a result, operators may choose to look to off-site ISFSIs for future storage capacity. After reviewing the comments, the Treasury Department and the IRS have decided to address this consideration by broadening the definition of nuclear decommissioning costs in §1.468A-1(b)(6) to include expenses related to spent fuel storage in ISFSIs both on-site and off-site from the nuclear power plant that generates such spent fuel.

B. Inclusion of Amounts Related to a Depreciable Asset and to Land Improvements within Definition of Nuclear Decommissioning Costs

In response to questions about whether a cost must be currently deductible for that amount to be payable currently from the Fund under the “otherwise deductible” language of §1.468A-1(b)(6) of the existing regulations, the proposed regulations broadened the definition of nuclear decommissioning costs to include the total cost of depreciable or amortizable assets by adding the words “or recoverable through depreciation or amortization” following “otherwise deductible.”

Commenters suggested that the term “otherwise deductible” be removed from the definition of nuclear decommissioning costs. These commenters asserted that the “otherwise deductible” requirement is unnecessary with respect to all decommissioning costs because deductibility is not required by the legislative intent or plain language of the Code. Nuclear decommissioning costs are broadly defined in §1.468A-1(b)(5) of the regulations to include expenses incurred before, during, and after the actual

decommissioning process for the nuclear power plant unit that has ceased operations. This broad definition is consistent with Congress's recognition in enacting section 468A of the Code in 1984 (at the same time as section 461(h) relating to economic performance was enacted) that “the establishment of segregated reserve funds for paying future nuclear decommissioning costs was of sufficient national importance that a tax deduction, subject to limitations, should be provided for amounts contributed to qualified funds.” And further, “[t]axpayers who do not elect this provision are subject to the general rules in the Act which do not permit accrual basis taxpayers to deduct future liabilities prior to the time when economic performance occurs (Code Sec 461).” Joint Committee on Taxation Staff, General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984, 98th Cong., 2d Sess. 270 (1984).

Nuclear decommissioning costs must be incurred for the purposes intended by Congress. However, whether nuclear decommissioning costs are “otherwise deductible” are determined under other provisions of the Code. Costs that meet the definition of nuclear decommissioning costs under section 468A are not independently deductible under section 468A. Specifically, under section 468A(c)(2), these costs are deductible when economic performance occurs under section 461(h)(2) if the costs are deductible under section 162 (or are otherwise deductible under another provision of chapter 1 of the Code). Further, the Treasury Department and the IRS believe that the broader definition of nuclear decommissioning costs in the proposed regulations will eliminate most of the issues raised by commenters suggesting deletion of “otherwise deductible,” and thus the final regulations do not adopt this suggestion.

One commenter observed that the proposed regulations can be interpreted to mean that an expense for property will not be deemed recoverable through depreciation or amortization if the property will be considered abandoned for purposes of section 165. The commenter noted that such an interpretation could lead to inconsistent results depending on the type of cost and whether such cost is incurred while the plant is still operating versus if such cost is incurred when the plant is already retired or decommissioned. The Treasury Department and the IRS do not believe that the suggested interpretation is correct. The definition of nuclear decommissioning costs in the proposed regulations should be interpreted to include costs incurred for depreciable assets as those costs are incurred, whether or not such asset will be abandoned for purposes of section 165.

Commenters suggested that the Treasury Department and the IRS consider including additional types of assets, such as land improvements, within the definition of nuclear decommissioning costs to effectuate the purpose of section 468A. The Treasury Department and the IRS agree with this suggestion. Accordingly, the final regulations broaden the definition of nuclear decommissioning costs in §1.468A-1(b)(6)(i) to include “all land improvements and otherwise deductible expenses to be incurred in connection with the entombment, decontamination, dismantlement, removal, and disposal of the structures, systems and components of a nuclear power plant, whether that nuclear power plant will continue to produce electric energy or has permanently ceased to produce electric energy.”

Commenters also noted that the use of the term “expense” may cause confusion because the common business usage of the term “expense” suggests a period cost. A

commenter recommended that the final regulations use the term “expenditure,” which in common business usage denotes an outflow of resources, as more appropriate than “expense” where the reference to a period cost is not specifically intended. While the Treasury Department and the IRS acknowledge the merits of this clarification, the term “expense” is used to describe similar concepts throughout many other sections of the existing regulations. Because adoption of the term “expenditure” in §§1.468A-1 and 1.468A-5 may cause additional confusion and inconsistency with other sections of the existing regulations where the term “expense” is used for similar concepts (for example, §1.468A-4(b)(2) Treatment of Nuclear Decommissioning Fund; Modified Gross Income), the final regulations do not adopt this recommendation.

2. Clarification of the Applicability of the Self-Dealing Rules to Transactions Between the Fund and Disqualified Persons

The proposed regulations provided that, for purposes of the prohibitions against self-dealing provisions in existing §1.468A-5(b), reimbursement of decommissioning costs by the Fund to a disqualified person that paid such costs is not an act of self-dealing. The Treasury Department and the IRS received no comments on this provision, and these final regulations adopt the proposed regulations on this point.

The preamble to the proposed regulations further stated that no amount beyond what is actually paid by the disqualified person, including amounts such as direct or indirect overhead or a reasonable profit element, may be included in the reimbursement by the Fund. Several commenters recommended amending the language of §1.468A-5(b) to expand the types of expenses permitted to be reimbursed as nuclear decommissioning costs under the self-dealing rules to include direct or indirect overhead and a reasonable profit element. These commenters assert that there is no

existing statutory or regulatory requirement to suggest that it is not entirely appropriate for a contributor or its affiliate to be reimbursed for overhead of any type and, in addition, a reasonable profit element, if the amount of the charge is not excessive.

Under §1.468A-5(b)(2)(v) of the existing regulations, the payment of compensation (and payment or reimbursement of expenses) by a Fund to a disqualified person for personal services that are decommissioning costs and that are reasonable and necessary to carrying out the exempt purposes of the Fund are not an act of self-dealing if such payment is purely for the compensation (and payment or reimbursement of expenses) of such services, but only to the extent such payment would ordinarily be paid for like services by like enterprises under like circumstances. See section 4951(d)(2)(C), §§53.4951-1(a), 53.4941(d)-3(c), and 1.162-7. The fact that the total amount of such payment is more than the disqualified person's actual expenses paid for such personal services does not cause the Fund's payment to constitute an act of self-dealing, even if the difference is properly characterized as profit, or direct or indirect overhead. See §53.4941(d)-3(c)(1). In response to the comments on this issue, the Treasury Department and the IRS have modified the language of §1.468A-5(b)(2)(v) to refer to the determination of whether a payment is reasonable under section 4951(d)(2)(C), §§53.4951-1(a), 53.4941(d)-3(c), and 1.162-7.

Conversely, one commenter observed there is a significant risk for abuse of the self-dealing rules where nuclear power plants are decommissioned by "contractors" that are also the owners of the nuclear power plant because the fees for their services or activities may also include a profit margin that is not properly reported for federal income tax purposes. As a result, the tax treatment of Funds could be exploited as a

tax loophole. This commenter requested that the Treasury Department and the IRS either modify the proposed regulations to require the reporting of profits in charges paid to related entities (or to the taxpayers themselves) by a Fund, and/or promulgate reporting requirements in the implementation of the final regulations. The Treasury Department and the IRS decline to adopt this change because, as discussed above, the safeguards in place under the self-dealing rules are adequate to avoid the potential exploitation identified by the commenter.

3. Definition of “Substantial Completion” in §1.468A-5(d)(3)(i)

Existing §1.468A-5(d)(3)(i) defines the substantial completion date as “the date that the maximum acceptable radioactivity levels mandated by the Nuclear Regulatory Commission [NRC] with respect to a decommissioned nuclear power plant are satisfied.” The proposed regulations amended this definition to provide that the substantial completion date is the date on which all Federal, state, local, and contractual decommissioning liabilities are fully satisfied. Because the Treasury Department and the IRS received no comments on this proposed amendment, the final regulations adopt this change to the definition.

Effective/Applicability Date

Section 7805(b)(1)(A) and (B) of the Code generally provides that no temporary, proposed, or final regulation relating to the internal revenue laws may apply to any taxable period ending before the earliest of (A) the date on which such regulation is filed with the **Federal Register**, or (B) in the case of a final regulation, the date on which a proposed or temporary regulation to which the final regulation relates was filed with the **Federal Register**.

The proposed regulations provided that the regulations would apply to taxable years ending on or after the date of publication of the Treasury decision adopting the proposed rules as final regulations in the **Federal Register**. Additionally, the preamble to the proposed regulations provided that, notwithstanding the prospective effective date, taxpayers could take return positions consistent with the proposed regulations for taxable years ending on or after December 29, 2016 (the date the proposed regulations were published in the Federal Register).

One commenter proposed that the effective and applicability dates of these regulations be amended to permit taxpayers to rely on the provisions of the final regulations for taxable years that are open as of the date the proposed regulations were published in the **Federal Register**. After consideration, the Treasury Department and IRS decline to adopt this comment in the final regulations. As noted in the preceding paragraph, the preamble to the proposed regulations made clear that taxpayers could take return positions consistent with the notice of proposed rulemaking for taxable years ending on or after December 29, 2016 (the date the proposed regulations were published in the **Federal Register**). This allowed taxpayers to request schedules of ruling amounts from the IRS (as required by section 468A(d)(1) and §1.468A-3) with respect to costs that were treated as nuclear decommissioning costs under the proposed regulations and to deduct those amounts in taxable years ending on or after December 29, 2016. However, for taxpayers that have not requested and obtained a schedule of ruling amounts for taxable years for which the deemed payment deadline date (as defined in §1.468A-2(c)(1)) has passed as of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, under §1.468-3(e)(v), it is impossible

to obtain a schedule of ruling amounts (and therefore impossible to contribute any amount to a qualified fund) because the request for the schedule of ruling amounts would be submitted to the IRS after the deemed payment deadline date. Accordingly, while the final regulations apply to taxable years ending on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, taxpayers may apply the rules contained in the final regulations to prior taxable years for which a taxpayer's deemed payment deadline has not passed prior to **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. See section 7805(b)(7).

Special Analyses

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

These final regulations have been designated by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and OMB regarding review of tax regulations. OIRA has determined that the final rulemaking is significant and subject to review under Executive Order 12866 and section 1(b) of the Memorandum of Agreement.

1. Background and Need for Regulation

Federal law requires operators of nuclear power plants to dismantle these plants and safely dispose of the fuel when the useful life of the plant has expired. Nuclear Regulatory Commission (NRC) rules require plant owners to demonstrate that sufficient financial resources will be available for decommissioning costs.¹ Additionally, owners are required to report to the NRC at least every two years the status of a plant's decommissioning funding. The NRC rules allow for various methods to satisfy the requirement for dedicated decommissioning funds. Section 468A of the Code is intended to facilitate these requirements by allowing taxpayers with ownership interests in nuclear power plants to elect to currently deduct the future costs of decommissioning a nuclear power plant.² Funds for which an election has been made under section 468A are widely used in the industry, but not all decommissioning funding vehicles are section 468A funds.

The election is made pursuant to procedures provided in existing regulations under section 468A and allows taxpayers to make contributions to a Nuclear Decommissioning Fund ("Fund") prior to the time when actual decommissioning costs are incurred.³ When amounts are actually distributed from the Fund the electing taxpayer faces a gross income inclusion. Generally, the income inclusion is offset with a corresponding deduction for the costs of decommissioning activities when they are

¹ A detailed description of nuclear decommissioning and the various Nuclear Regulatory Commission (NRC) rules are beyond the scope of this document.

² See generally Joint Committee on Taxation Staff, General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984, 98th Cong. 2d Sess. 270 (1984).

³ Electing taxpayers are permitted to contribute to the Fund amounts in accordance with a schedule of ruling amounts, which taxpayers must request and receive from the IRS. Very generally, the schedule of ruling amounts should reflect the total cost for decommissioning the plant over the estimated useful life of the plant. Section 468A(d); §1.468A-3.

actually performed. Funds are treated as separate taxable corporations, with investment incomes subject to a fixed 20 percent rate of tax.

Section 468A(a) limits the purposes for which amounts can be considered “nuclear decommissioning costs.” The definition of such costs forms the basis for a large portion of the rulemaking that has been issued regarding 468A and furthermore forms the bulk of the basis for the final regulations.⁴ As decommissioning activity increases and technologies change, additional guidance is needed to address withdrawals from the Fund to cover new costs and cost categories that may arise for purposes of decommissioning. For example, the accumulating amounts of spent nuclear fuel and the ongoing lack of a Federal repository for that fuel have led plant owners to store spent nuclear fuel in Independent Spent Fuel Storage Installations (ISFSIs). The need to independently store spent fuel was not anticipated when previous IRS regulations were issued. The final regulations clarify that the costs of an ISFSI and related matters are decommissioning costs for purposes of section 468A.

More generally, the final regulations provide clarifications and updates to existing regulations in response to industry requests for public guidance on this and related issues. These clarifications generally have already been adopted by the IRS in its private letter rulings but stakeholders have requested that the regulations be amended to provide additional certainty.

2. Overview of the Final Regulations

⁴ Section 468A was added by the Deficit Reduction Act of 1984. Regulations were first promulgated in 1988 and were amended in 1992, 1994, 2007, and 2010.

The regulations provide guidance on deductions for contributions to funds maintained for decommissioning nuclear power plants and the use of the amounts in those funds to decommission nuclear plants under section 468A. Specifically, the regulations (1) broaden the definition of nuclear decommissioning costs in §1.468A-1(b)(6) to include expenses related to spent fuel storage in ISFSIs both on-site and off-site from the nuclear power plant that generates such spent fuel; (2) clarify that the definition of nuclear decommissioning costs in §1.468A-1(b)(6) does not only include currently deductible costs by adding the words “or recoverable through depreciation or amortization” following “otherwise deductible”; (3) broaden the definition of nuclear decommissioning costs in §1.468A-1(b)(6)(i) to include “all land improvements and otherwise deductible expenses to be incurred in connection with the entombment, decontamination, dismantlement, removal, and disposal of the structures, systems and components of a nuclear power plant, whether that nuclear power plant will continue to produce electric energy or has permanently ceased to produce electric energy”; (4) broaden the exemption from the self-dealing rules to include reimbursements to parties related to the electing taxpayer and also expand the types of expenses permitted to be reimbursed as nuclear decommissioning costs under the self-dealing rules to include direct or indirect overhead and a reasonable profit element; and (5) provide that the substantial completion date is the date on which all Federal, state, local, and contractual decommissioning liabilities are fully satisfied.

3. Economic Effects of the Final Regulations

A. Baseline

The Treasury Department and the IRS have assessed the benefits and costs of the final regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these regulations.

B. Summary of Economic Effects

The final regulations provide certainty and clarity regarding the tax treatment of nuclear decommissioning costs. The Treasury Department and the IRS do not expect that the regulations will affect the decommissioning of nuclear plants in any meaningful way, including the mix or level of activities involved in decommissioning, because the management of spent nuclear fuel and related decommissioning activities are regulated by the NRC and governed by a wide range of non-tax regulations. The final regulations further do not provide any tax-based incentives that would affect in any substantial way the decision to decommission, the timing of decommissioning, or the methods chosen to decommission any plant or plants in general.

In the absence of these regulations, the Treasury Department and the IRS expect that decommissioning would generally proceed the same. The Treasury Department and the IRS further note that the final regulations largely implement existing industry expectations for tax treatment of decommissioning expenses, as informed by private letter rulings.

The Treasury Department and the IRS also considered whether the final regulations will affect decisions for owners or operators to plan, construct, or open new nuclear facilities. Future decommissioning of any new plants would take place many years from now and any issues regarding changes in technology can be expected to be

dealt with through future rulemaking. Therefore, the Treasury Department and the IRS do not expect the final regulations to affect decisions about new facilities.

The Treasury Department and the IRS welcome comments on these conclusions and more generally on the economic effects of these final regulations.

Regulatory Flexibility Act

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601). Although a substantial number of small entities may be affected, the economic impact of this rule is unlikely to be significant.

According to the Small Business Administration's Table of Size Standards (13 CFR 121), utilities, including nuclear electric power generation with 750 or fewer employees (NAICS Code 221113), are considered small entities. According to the 2016 Statistics of U.S. Businesses (SUSB) data, there are at least seven entities with fewer than 750 employees of the 27 entities in the industry, which could be considered a substantial number of small entities for purposes of the RFA.

The economic impact of these regulations on small entities is not likely to be significant. Section 468A of the Code allows taxpayers with ownership interests in nuclear power plants to elect to currently deduct the future costs of decommissioning a nuclear power plant. The procedures for this election are set forth in existing regulations. As discussed earlier in these Special Analyses, the final regulations provide clarifications and updates to the existing regulations in response to industry requests for public guidance. These clarifications generally have already been adopted by the IRS in private letter rulings but stakeholders have requested that the regulations

be amended to provide additional certainty. Because the final rule is codifying what is widely understood to be existing policy, the economic impact of this rule is not likely to be significant for any entities affected, regardless of size.

Pursuant to section 7805(f) of the Code, the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business and no comments were received.

Paperwork Reduction Act

There is no new collection of information contained in these regulations. The collection of information contained in the regulations under section 468A has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2091. Responses to these collections of information are required to obtain a tax benefit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law.

Generally, tax returns and tax return information are confidential, as required by section 6103 of the Code.

Drafting Information

The principal author of these regulations is Jennifer C. Bernardini, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.468A-1 is amended by adding paragraphs (b)(6)(i) and (ii) to read as follows:

§1.468A-1 Nuclear decommissioning costs; general rules.

* * * * *

(b) * * *

(6) * * *

(i) For the purpose of this title, the term nuclear decommissioning costs or decommissioning costs includes all expenses related to land improvements and otherwise deductible expenses to be incurred in connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and

components of a nuclear power plant, whether that nuclear power plant will continue to produce electric energy or has permanently ceased to produce electric energy. Such term includes all expenses related to land improvements and otherwise deductible expenses to be incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all otherwise deductible expenses to be incurred with respect to the plant after the actual decommissioning occurs, such as physical security and radiation monitoring expenses. An expense is otherwise deductible for purposes of this paragraph (b)(6) if it would be deductible or recoverable through depreciation or amortization under chapter 1 of the Internal Revenue Code without regard to section 280B.

(ii) The term nuclear decommissioning costs or decommissioning costs, as applicable to this title, also includes expenses incurred in connection with the construction, operation, and ultimate decommissioning of a facility used solely to store, pending delivery to a permanent repository or disposal, spent nuclear fuel generated by one or more nuclear power plants (for example, an Independent Spent Fuel Storage Installation). Such term does not include otherwise deductible expenses to be incurred in connection with the disposal of spent nuclear fuel under the Nuclear Waste Policy Act of 1982 (Pub. L. 97-425).

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Par. 3. Section 1.468A-5 is amended by revising the section heading and paragraphs (b)(2)(i) and (v) and (d)(3)(i) to read as follows:

§1.468A-5 Nuclear decommissioning fund--miscellaneous provisions.

* * * * *

(b) * * *

(2) * * *

(i) A payment by a nuclear decommissioning fund for the purpose of satisfying, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates, whether such payment is made to an unrelated party in satisfaction of the decommissioning liability or to the plant operator or other otherwise disqualified person as reimbursement solely for actual expenses paid by such person in satisfaction of the decommissioning liability;

* * * * *

(v) Any act described in section 4951(d)(2)(B) or (C). Whether payments under section 4951(c)(2)(C) are not excessive is determined under §1.162-7. See §53.4941(d)-3(c)(1). The fact that the amount of such payments that are not excessive are also more than the disqualified person's actual expenses for such personal services does not cause the payments to constitute acts of self-dealing, even if the difference is properly characterized as profit, or direct or indirect overhead;

* * * * *

(d) * * *

(3) * * *

(i) The substantial completion of the decommissioning of a nuclear power plant occurs on the date on which all Federal, state, local, and contractual decommissioning requirements are fully satisfied (the substantial completion date). Except as otherwise provided in paragraph (d)(3)(ii) of this section, the substantial completion date is also the termination date.

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Par. 4. Section 1.468A-9 is revised to read as follows:

§1.468A-9 Applicability dates.

(a) In general. Except as provided in paragraph (b) of this section, §§1.468A-1 through 1.468A-8 are effective on December 23, 2010, and apply with respect to taxable years ending after such date.

(b) Special rules--(1) Taxable years ending before December 23, 2010. Special rules that are provided for taxable years ending on or before December 23, 2010, such as the special rule for certain special transfers contained in §1.468A-8(a)(4)(ii), apply with respect to such taxable years. In addition, except as provided in paragraph (2) of this section, a taxpayer may apply the provisions of §§1.468A-1 through 1.468A-8 with respect to a taxable year ending on or before December 23, 2010, if all such provisions are consistently applied.

(2) Applicability of §1.468A-1(b)(6) and §1.468A-5(b)(2)(i), (b)(2)(v), and (d)(3)(i). The rules in §§1.468A-1(b)(6) and 1.468A-5(b)(2)(i), (b)(2)(v), and (d)(3)(i) apply to taxable years ending on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Taxpayers may also choose to apply the rules in §1.468A-1(b)(6) and §1.468A-5(b)(2)(i), (b)(2)(v), and (d)(3)(i) to prior taxable years for which a taxpayer's deemed payment deadline (as defined in §1.468A-2(c)(1)) has not passed prior to **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Sunita Lough,
Deputy Commissioner for Services and
Enforcement.

Approved: March 5, 2020.

David J. Kautter,
Assistant Secretary of the Treasury
(Tax Policy).

[FR Doc. 2020-16955 Filed: 9/3/2020 8:45 am; Publication Date: 9/4/2020]